

COMPARISON OF CALIFORNIA MARKETING ORDERS, COUNCILS, AND COMMISSIONS

This document is intended to be a broad summary only. Refer to the Marketing Act of 1937 or the respective council or commission laws for more specific information.

	MARKETING ORDER (Agreements are like marketing orders except for bold information.)	COUNCIL	COMMISSION
STATUTORY AUTHORITY FOR CREATION	Under general enabling authority provided in the California Marketing Act of 1937 and implemented administratively through rules and regulations of the Department of Food and Agriculture.	Through commodity specific legislation.	Through commodity specific legislation.
SCOPE OF ACTIVITIES	<p>Promotion, advertising, education, production research, quality standards, inspection and supply control*.</p> <p>* No marketing order currently utilizes supply control authority.</p>	Promotion, advertising, education, marketing research, and research.	<p>Promotion, advertising, education, marketing research, and production research.</p> <p>The Avocado and the Pistachio Commission Laws incorporate all of the authorities provided for in the Marketing Act. The Apple Commission Law authorizes the adoption of maturity standards pursuant to the Marketing Act.</p>
PROCEDURE TO ESTABLISH	<p>A. Prepare preliminary draft of order.</p> <p>B. Department conducts a public hearing if deemed appropriate by the Department of Food and Agriculture.</p> <p>C. The Department conducts an industry vote if testimony at hearing demonstrates that the proposed marketing order may benefit the industry.</p> <p>D. If the industry approves the marketing order by meeting the specified voting requirements, the Department orders the marketing order into effect.</p> <p>An agreement is only binding upon the signatories and so after the public hearing the Department conducts an industry sign-up to determine who wishes to participate. There is no specific sign-up criteria. However, the Department must find “that the agreement has been assented to by a sufficient number of signatories that handle a sufficient volume. . . .”</p>	<p>A. Draft proposed statute and seek approval through legislative process.</p> <p>B. Department conducts industry vote.</p> <p>C. If the Department finds that the specified voting requirements have been met, it shall certify and give notice of the favorable vote.</p>	<p>A. Draft proposed statute and seek approval through legislative process.</p> <p>B. Department conducts industry vote.</p> <p>C. If the Department finds that the specified voting requirements have been met, it shall certify and give notice of the favorable vote.</p>
AMENDMENTS	<p>Major amendments must be developed in the same manner as the original order unless considered minor in nature. Minor amendments may be made by the Department upon recommendation of a Board when they are for clarification or administrative purposes only and do not change the purpose of a marketing order.</p> <p>Major amendments to agreements require a public hearing followed by a new industry sign-up.</p>	Same procedure as establishing the original council law. However industry vote is generally not required. Generally, council authority to adopt its own rules and regulations allows it to address minor amendments without returning to the legislature.	Same procedure as establishing the original commission law. However industry vote is generally not required. Generally, commission authority to adopt its own rules and regulations allows it to address minor amendments without returning to the legislature.

Comparison of California Marketing Orders, Councils, and Commissions - Continued

	MARKETING ORDER (Agreements are like marketing orders except for bold information.)	COUNCIL	COMMISSION
PROGRAM AUTHORITY AND ROLE OF THE DEPARTMENT	Boards are advisory to the Department and make recommendations to it. All actions of an Advisory Boards are subject to Department approval.	Councils are advisory to the Department and make recommendations to it. All actions of a Council are subject to Department approval.	Generally, commissions are not advisory to the Department. However, for most commissions, the Department has cease and desist authority for actions it deems not in the public interest. For many commissions, the Department must concur with the commission budget and annual activities statement. Also, the Department is provided a non-voting ex-officio member position on most commissions.
MEMBERSHIP AND SELECTION PROCESS	Board may consist of producers and handlers, depending upon who is affected, and may have one public member. Members are recommended by industry peers through a nomination process and appointed by the Department. Appointments to an agreement board are from signatories, not from the industry as a whole.	Generally the same as marketing orders.	Commissions may consist of producers and handlers, depending upon who is affected, and may have one public member. Members are elected directly by industry peers, without the Department's appointment.
CONTINUATION	A public hearing is required at least once every five years. Some marketing orders have a referendum, rather than a hearing, as a continuation requirement. Agreements have periodic sign-ups.	Generally, an industry hearing is required at least once every five years. However the Dairy Council requires a public hearing at least once every four years. The Beef Council has no periodic reapproval requirement.	The specific reapproval requirements vary from commission to commission. Though generally, an industry vote or hearing is required at least once every five years.
TERMINATION	A. Advisory Board may recommend that a budget and assessment rate not be established, which suspends the Board. The Department may terminate a marketing order after three years of no recommended budget and assessment rate. B. Department may conduct a public hearing, if it receives a petition supported by at least 25% of producers or handlers that are directly affected and who produce or handle at least 25% of the volume. If questions exist as to the effectiveness of the marketing order, the Department shall conduct an industry vote to determine if marketing order shall continue. C. The Department must terminate a marketing order if it receives a petition supported by at least 51% of producers or handlers that are directly affected and who produce or handle at least 51% of the volume. Since agreements are voluntary and only binding upon signatories, the termination procedures do not apply.	Generally councils can only be terminated during the continuation process. Please Note: the Beef Council shall be submitted for an industry vote if the Department or the Council determines that the Council is not effective. In addition producers may petition for a vote of the industry.	Generally as follows: A. A commission by a 2/3 vote may recommend to the Department to conduct an industry vote for termination. B. An industry vote for termination is conducted if the Department receives a petition supported by 20% of the affected producers or handlers who account for 20% of the volume. C. The Department terminates a commission directly if it receives a petition supported by 51% of the affected producers or handlers who account for 51% of the volume.
NONCOMPLIANCE PENALTIES	Criminal and civil. Violation of an agreement does not qualify as a misdemeanor.	Similar.	Similar.